



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 124

[FRL-9971-52-OARM]

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits; Procedures for Decisionmaking; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) published a document in the **Federal Register** on January 9, 2017. That document revised filing and service requirements in permit appeal proceedings before the Environmental Appeals Board, but in doing so two subsections of the procedural rule were inadvertently and unintentionally removed. This rule corrects that inadvertent removal as well as two other non-substantive typographical errors in the rule.

DATES: This final rule correction is effective on **[insert date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Ammie Roseman-Orr, Environmental Appeals Board, U.S. Environmental Protection Agency, William Jefferson Clinton Building East, 1200 Pennsylvania Ave NW, Mail Code 1103M, Washington DC 20460-0001, phone number (202) 233-0122 or by email at roseman-orr.ammie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this rule in final form without first issuing a proposal?

Today's final rule is limited to correcting a mistake to procedural requirements for administrative adjudicatory hearings and appeals from such hearings and from permit decisions. As an amendment to a procedural rule, this final rule itself is a procedural rule. Under the Administrative Procedure Act, an agency may issue "rules of agency organization, procedure, or practice" without first proposing such rules for public comment. 5 U.S.C. 553(b). Accordingly, public comment is not required.

In addition, EPA has determined that this rule is effective immediately upon publication in the **Federal Register**. In general, Section 5 U.S.C. 553(d) requires that substantive rules not become effective less than 30 days after publication. However, this action involves not a substantive rule but a procedural rule. Moreover, the purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This action does not create any new regulatory requirements such that affected parties would need time to prepare before the actions take effect. To the contrary, this action merely corrects typographical errors and restores regulatory text that was inadvertently deleted thereby restoring the prior status quo. Furthermore, the absence of these provisions may result in confusion to parties as well as inefficiencies in the appeals process and thus it is in the public interest have the restoration of those provisions effective immediately. See 5 U.S.C. 553(d)(3).

II. Does this action apply to me?

This action affects parties involved in EPA administrative adjudicatory proceedings for the assessment of civil penalties, issuance of various compliance orders, and termination or

suspension of certain permits, under part 22 of title 40 of the CFR. See 40 CFR 22.1. This action also affects parties involved in appeal of EPA permits under part 124 of title 40 of the CFR.

III. Background

The rule document published on January 9, 2017 (82 FR 2230), revised the filing and service procedures used in permit appeals to the Environmental Appeals Board. The EPA also revised 40 CFR 124.19(b)(1) and (2) so that the deadlines for filing a response to a petition for review are based on the date the petition for review is served, rather than the date it is filed. Subsections (3) and (4) were intended to remain unchanged but were inadvertently removed from the rule.

Additionally, in §124.19(i)(2)(iii), the address for delivery by hand or courier to the Environmental Appeals Board incorrectly identifies the room number as 3334 when the actual room number is 3332 and language regarding methods of delivery by hand or courier was inadvertently omitted.

Finally, the language in §124.19(i)(3)(ii) revising the service requirements to allow for service by email inadvertently contains an extra “or” that does not belong so that this provision of the rule now reads: “Service must be by first class U.S. mail, by any reliable commercial delivery service, or, if agreed to by the parties, by facsimile or other electronic means, including but not necessarily limited to or email.” Removal of the last “or” will make the sentence clearer.

IV. Need for Correction

As published on January 9, 2017 (82 FR 2230), the final regulation contains an error that resulted in the inadvertent removal of two procedural provisions that govern the participation of

permit applicants, State, and Tribal Authorities in permit proceedings before the Environmental Appeals Board. The absence of these provisions may result in confusion to parties and inefficiencies in the appeals process and thus these provisions need to be reinstated. Additionally, revising the Environmental Appeals Board's address for delivery by hand or courier in §124.19(i)(2)(iii) to reflect the correct room number and to include methods of delivery by hand or courier will avoid potential confusion. Finally, the superfluous "or" in the third sentence of §124.19(i)(3)(ii) is confusing. Removal of that word will not change the meaning of the sentence and will make the provision clearer.

List of Subjects in 40 CFR Part 124

Environmental protection, Administrative practice and procedures.

Dated: January 22, 2018.

Donna J. Vizian,
Principal Deputy Assistant Administrator,
Office of Administration and Resources Management.

Accordingly, 40 CFR part 124 is corrected as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et. seq.*; Clean Water Act, 33 U.S.C. 1251 *et. seq.*; Clean Air Act, 42 U.S.C. 7401 *et. seq.*

2. In §124.19:

- a. Add paragraphs (b)(3) and (4).
- b. Revise paragraph (i)(2) introductory text and paragraph (i)(2)(iii).
- c. Revise the third sentence of paragraph (i)(3)(ii).

The addition and revisions read as follows:

§124.19 Appeal of RCRA, UIC, NPDES and PSD Permits.

* * * * *

(b) ***

(3) A permit applicant who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance and a response to the petition. Such documents must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

(4) The State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer) must also file a notice of appearance and a response if it wishes to participate in the appeal. Such response must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

* * * * *

(i) ***

(2) *Method of filing.* Unless otherwise permitted under these rules, documents must be filed either by using the Environmental Appeals Board's electronic filing system, by U.S. mail, or by hand delivery or courier (including delivery by U.S. Express Mail or by a commercial delivery service). In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, submit the original copy to the Clerk of the Environmental Appeals Board either electronically, by mail, or by hand delivery or courier. The Environmental Appeals Board may by order require filing by facsimile or the Board's electronic filing system, subject to any appropriate conditions and limitations.

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(iii) *Filing by hand delivery or courier.* Documents delivered by hand or courier (including deliveries by U.S. Express Mail or by a commercial delivery service) must be delivered to the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, WJC East Building, 1201 Constitution Avenue NW, Room 3332, Washington, DC 20004.

(3) ***

(ii) *Service requirements for parties.* * * * Service must be by first class U.S. mail, by any reliable commercial delivery service, or, if agreed to by the parties, by facsimile or other electronic means, including but not necessarily limited to email. * * *

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